IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

TUESDAY, THE 18TH SEPTEMBER 2007 / 27TH BHADRA 1929

WP(C).No. 17238 of 2007(B)

PETITIONER:

ANANTHA SHENOI, S/O. P.N.SARVOTHAMA
SHENOI, AGED 47, PANAKAMPARAMBIL (H),
CHANDIROOR, ALAPPUZHA.

BY ADV. SRI.P.CHANDRASEKHAR
SRI.G.KRISHNAKUMAR
SRI.SAIJO HASSAN

RESPONDENTS:

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1. AROOR GRAMA PANCHAYATH,
AROOR P.O., PIN-688 534, ALAPPUZHA DISTRICT,
REPRESENTED BY ITS SECRETARY.

2. SRI. S.K.CHANDRABABU,
S/O. KUNJAPPAN, AGED ABOUT 42, 'INDIRA MANDIRAM',
CHANDIROOR P.O., PIN-688 534, ALAPPUZHA DISTRICT.

R1 BY ADV. SRI.PHILIP T.VARGHESE
SRI.THOMAS T.VARGHESE

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 18/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PIUS C. KURIAKOSE,J.

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W.P.(C) No.17238 of 2007

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Dated: 18th September, 2007

JUDGMENT

The grievance of the petitioner is that a residential building which was constructed by him within the area of the 1st respondent-Panchayat has not been assigned door number by the 1st respondent. The allegation is that it is at the instance of the 2nd respondent who is the local ward member that the Panchayat is not inclined to number the building. The stand of the Panchayat as revealed from the counter affidavit is that the construction offends Section 220B of the Panchayat Raj Act, i.e. the statutory set back of 3 metres from the margin of the road is not maintained. According to the petitioner, sufficient statutory set back has been provided while they constructed the building. In order to resolve the controversy pursuant to orders in I.A.No.10943 of 2007, Adv. Saijo Hassan was appointed for conducting a local inspection and measurement of the properties with the assistance of the Taluk Surveyor. The Advocate Commissioner after conducting inspection and measurement has filed his report which concludes as follows:

"In the front side of the building, basement for constructing the boundary wall is already constructed. The basement is having a

length of 9.75 meters. The distance of the building from the basement of the boundary wall is 3 meters. The distance from the boundary basement wall to tarred portion of the main road is 10.5 meters. Rough sketch showing the measurements prepared by the Taluk Surveyor is produced herewith and marked as Annexure A."

It is true that Annexure A does not show the relative position of the building constructed by the petitioner on his plot. However, the Advocate Commissioner's report does not admit of any ambiguity. Going by that report, the statutory set back of minimum 3 meters is maintained. The Panchayat would rely on Ext.R1(a) report of the Village Officer going by which the distance between the margin of the road and the construction put up by the petitioner is only 2.95 meters. Notwithstanding Ext.R1(a), having considered the Advocate Commissioner's report which is based on measurement by the Taluk Surveyor though the Taluk Surveyor's sketch does not show the relative position of the building, I am inclined to accept the petitioner's case that his building is situated at a distance of more than 3 meters from the margin of the Highway in question. Of course, the Panchayat also relies on Ext.R1 issued to the Secretary of the Panchayat by the Executive Engineer of the N.H.Division, Alappuzha.

It would appear on reading of Ext.R1 that constructions are permitted only beyond a distance of 5 meters from the margin of the National Highways. But a careful reading of Ext.R1 will show that rule, if any, prohibiting constructions within a distance of 5 meters from the margin of National Highway is intended to operate only in future. The petitioner's construction is obviously a construction which was completed in 2006. Ext.R1 cannot apply to the constructions put up by the petitioner. I do not find any justification for the Panchayat not numbering the petitioner's building. I dispose of the Writ Petition directing the Panchayat to assign door number to the petitioner's building and to issue ownership certificate for the building. Needful will be done by the Panchayat at the earliest and at any rate within three weeks of receiving copy of this judgment.

srd **PIUS C.KURIAKOSE, JUDGE**